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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 674

SHAWANO NATIONAL BANK, A CORPORATION, AND H. J. ROSE, PETITIONERS

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 22–26) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 13, 1945 (R. 26). The petition for a writ of certiorari was filed December 17, 1945. The jurisdiction of this Court is

invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the order of the District Court requiring compliance with a subpoena duces tecum which specifies certain records and documents, issued by the Price Administrator pursuant to the authority vested in him by Section 202 of the Emergency Price Control Act of 1942, as amended, infringes upon the constitutional rights of the petitioners.

2. Whether Section 5240 of the Revised Statutes of the United States, as amended (12 U. S. C. 484), precluded the Price Administrator, while making an investigation under the authority of Section 202 of the Emergency Price Control Act of 1942, as amended, from requiring a proper witness to produce, and to testify with respect to, clearly identified records of a national bank.

STATUTES INVOLVED

1. Section 202 of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Extension Act of 1944 (58 Stat. 637; 50 U. S. C. App., Supp. IV, Sec. 922), provides as follows:

> SEC. 202. (a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems neces-

sary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the

return date specified in the subpena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

(f) Witnesses subpenaed under this section shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect

to any individual who specifically claims such privilege.

(h) The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security.

(i) Any person subpenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

2. Section 5240 of the Revised Statutes of the United States, as amended by the Act of December 23, 1913, 38 Stat. 271–272 (12 U. S. C. 484), relating to national banks, reads in part as follows:

* * * * *

No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

* * * * *

STATEMENT

Under date of April 23, 1945, the Price Administrator, pursuant to Section 202 of the Emergency Price Control Act of 1942, as amended,

supra, p. 2, issued a subpoena duces tecum directed to H. J. Rose, Cashier of the Shawano National Bank, Shawano, Wisconsin, requiring him to appear and testify at a place certain in the city of Green Bay, Wisconsin on April 25, 1945, and to bring with him all records of receipts, deposits, and withdrawals appertaining to the accounts of four named individuals with the Shawano National Bank (R. 5–6). Mr. Rose as the duly authorized representative of the Bank declined to obey the subpoena (R. 6–7), and upon a sworn application made on behalf of the Price Administrator (R. 1–4) to the United States District Court for the Eastern District of Wisconsin, that court ordered the petitioners to show cause why the subpoena should not be obeyed (R. 8). The cause was argued by counsel, but no evidence was adduced on behalf of the petitioners and no responsive pleading was filed in opposition to the application. The district court thereupon ordered the petitioners to comply with the subpoena (R. 9–10), and on appeal by the petitioners the circuit court of appeals affirmed the order (R. 22–26).

ARGUMENT

1. Section 202 of the Emergency Price Control Act, as amended, vests broad investigatory powers in the Price Administrator. The legislative history of the Act affirmatively shows that the Congress so intended. In reporting on the bill (H. R. 5990) which later became the Emergency Price

Control Act, the Committee on Banking and Currency of the United States Senate said concerning the investigatory powers granted to the Price Administrator:

> The committee, of course, recognizes that competent administration and enforcement of the act will be impossible unless the Administrator and persons acting under his direction are given broad investigatory powers. To this end the bill, like most recent legislation, provides authority for obtaining any information, oral or written, which may be of assistance to the Administrator in carrying out his duties. Power to enforce the right of inspection and to compel oral testimony and the production of documents is given to the appropriate courts. Senate Report No. 931, 77th Cong., 2nd Sess.

In view of the broad investigatory powers granted to the Price Administrator, an application for a compliance order under Section 202, *supra,* need not contain a specific complaint of wrongdoing or show probable cause for believing that a violation of the Act has been committed. *Bowles* v. *Baer,* 142 F. 2d 787 (C. C. A. 7th); *Fleming* v. *Montgomery Ward & Co.,* 114 F. 2d 384 (C. C. A. 7th), certiorari denied, 311 U. S. 690; *Bowles* v. *Glick Bros. Lumber Co.,* 146 F. 2d 566, 571 (C. C. A. 9th), certiorari denied June 11, 1945, No. 1213, October Term, 1944; cf. *President of the United States* v. *Skeen,* 118 F. 2d 58 (C. C. A. 5th).

A construction of Section 202 which would limit the investigatory power of the Price Administrator to cases in which he has reasonable cause to believe that the Act has been violated, would be inconsistent with other broad powers granted to him by the Act. Thus, the Price Administrator, while being called upon to make regulations governing the prices of thousands of commodities, would, under the construction contended for by petitioners, be deprived, in cases of contumacy, of the only effective means of obtaining information upon which to base intelligent exercise of the regulatory powers granted him. And, in the face of his statutory responsibility for enforcement of price control to prevent inflation during time of war, he would be denied compulsory access to information which would apprize him of new business practices and new methods of evasion.

The subpoena issued by the Price Administrator was not, as petitioners assert, a "fishing expedition" or a general exploratory search such as this Court condemned in its decisions in *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298; *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; and *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407. Its demands were confined to certain documents clearly described and easily distinguished; it did not, therefore, infringe upon any rights guaranteed to the petitioners by the Fourth Amendment to the United States Constitution. *Brown* v. *United States*, 276

U. S. 134; *Essgee Co. of China* v. *United States,* 262 U. S. 151; *Wilson* v. *United States,* 221 U. S. 361; *Consolidated Rendering Co.* v. *Vermont,* 207 U. S. 541. Nor may the petitioners invoke privileges that are personal to others, such as its depositors. *Blair* v. *United States,* 250 U. S. 273; *Wheeler* v. *United States,* 226 U. S. 478; *United States* v. *First National Bank of Mobile,* 295 Fed. 142 (S. D. Ala.), affirmed, 267 U. S. 576; *Genecov* v. *Federal Petroleum Board,* 146 F. 2d 596 (C. C. A. 5th), certiorari denied, 324 U. S. 865. And the application for a compliance order was clearly sufficient. It was therein stated that "For the purpose of obtaining information which the Administrator deems necessary or proper to assist him in the enforcement of the Act and Revised Maximum Price Regulation No. 289, as amended, duly issued under the Act, the Administrator * * * duly issued a subpoena duces tecum" (R. 2), and that "All of the aforesaid records required to be produced by said subpoena duces tecum were at the time of the issuance of said subpoena and are now deemed by the Administrator to be relevant and material to the procuring of information which the Administrator deems proper and necessary to assist him in enforcing the Act and the regulations, orders, and schedules issued thereunder, relating to the purchase, assembly and sale of cheese" (R. 3). Cf. *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501, 508–509.

It is clear that the court below committed no error in holding that the Administrator had authority to issue the subpoena and a legal right to its enforcement.

2. Since the Administrator had statutory authority to issue the subpoena in question, the court below was clearly right in holding that his action was within the exceptions to the restriction of visitorial powers over national banks provided in Section 5240 of the Revised Statutes, as amended, *supra*, p. 5. See *National Labor Relations Board* v. *Northern Trust Co.*, 148 F. 2d 24, 29 (C. C. A. 7th), certiorari denied, October 8, 1945, No. 189, October Term, 1945. Moreover, this Court held in *Guthrie* v. *Harkness*, 199 U. S. 148, that the term "visitorial powers," at that time embodied in Section 5241 of the Revised Statutes, but now incorporated in Section 5240 thereof, did not include the right of a shareholder to inspect the books and records of a national bank, which was accordingly not restricted by the statute. We submit that, equally, the subpoena powers of courts and administrative agencies do not come within the term "visitorial powers," even without reference to the statutory exceptions.

Petitioners point to the fact that in several instances the Comptroller of the Currency has been expressly authorized by Congress to furnish information concerning national banks to certain Government agencies (Pet. Br. 11). From this premise the argument is made that the Price Administrator has no authority under the Emergency Price Con-

trol Act to obtain information from national banks, because national banks are not expressly mentioned in that Act. Nothing in these statutes, however, establishes a Congressional policy to rely upon the Comptroller of the Currency to the exclusion of the courts as a means of obtaining information from national banks. Nor does petitioners' contention find support in the wording of Section 5240 of the Revised Statutes, which provides simply that no (national) bank shall be subject to visitorial powers other than such as "are authorized by law or vested in the courts of justice." The section does not read *expressly* authorized by law or *expressly* vested in the courts. Petitioners' contention is, therefore, without substance.

There is likewise no substance in the contention of the petitioners (Pet. Br. 12–13) that national banks are impliedly exempted from the Price Administrator's authority to obtain information by subpoena, because of the failure of the Emergency Price Control Act to carry penalties for the divulgence of information obtained from national banks. The contention ignores Section 202 (h), *supra*, p. 5, which specifically provides that information obtained under the authority of the Act shall not be published or disclosed if the Administrator deems it confidential or if the person from whom it is obtained requests that it be treated as confidential, unless the Administrator determines that the withholding of such information would be inimical to the interest of the national defense and security.

This language makes it clear that the Congress, while enacting the Emergency Price Control Act, was fully aware that information of a confidential character would be obtained under the subpoena power. Had it desired to make specific exceptions from that power, such as one relating to national banks, it would have used express language to do so.

CONCLUSION

There is no conflict of decisions and the decision below is correct. The petition should therefore be denied.

Respectfully submitted.

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